TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 232.

JAMES S. WILKINS, SURVIVING PARTNER OF F. H. CLARK & CO., PLAINTIFF IN ERROR,

vs.

SEMPLE SELLETT, ADMINISTRATOR OF THOMAS U. QUARLES, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED MAY 19, 1888.

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INDEX.

	Original.	Print.
Writ	2	1
Bond	3	1
Declaration	4	1
Order to amend the same	9	3
Plea	10	3
Replication	14	4
Judgment	21	5
Motion for new trial	22	7
Order overruling same	22	7
Bill of exceptions	23	7
Exhibits to same:		
A, letters of administration to plaintiff	24	8
B, account of F. H. Clark & Co	27	9
C, letter of decedent	28	9
D, letter of decedent	30	10
E, letter of decedent	31	10
F, letter of decedent	34	11
G, letter of decedent	37	12
M, letter of decedent	39	12
N, letter of decedent	40	12
H, deposition of William Goodloe	42	13
J, inventory	48	15
Charge	56	18
Clerk's certificate	74	22
Bill of costs	75	23
Bond	76	23
Citation	77	24

1 UNITED STATES OF AMERICA:

Be it remembered that the circuit court of the United States for the district of West Tennessee was begun and held at the federal court-rooms in the city of Memphis, in said district, on the first Monday, it being the second day, of September, in the year of our Lord one thousand eight hundred and sixty-seven.

Present and presiding, the Hon. Connally F. Trigg, United States district judge for the districts of Tennessee; present, also, Abram S. Mitchell, clerk.

2 The President of the United States of America to the marshall of the district of West Tennessee, greeting:

You are hereby commanded to summons James S. Wilkins, surviving partner of the firm of F. H. Clark and Company, a citizen of the State of Tennessee, if he be found within your district, to appear before the judge of the circuit court of the United States in the sixth circuit for the district of West Tennessee, at Memphis, on the first Monday of September next, and then and there to answer Semple Ellett, administrator of the estate of Thomas N. Quarles, dec'sd, of a plea of trespass on the case upon promises. Herein fail not, & have you then & there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this first Monday in March, in the year
3 1866, and of the independence of the United States the 90th.

[SEAL.] A. S. MITCHELL, *Clk*,
ISAAC MORRISON,
D. C. of said Court.

Know all men by these presents, that Marland L. Perkins is held and firmly bound unto William Wilkins in the sum of two hundred & fifty doll's, to be void on condition that Semple Ellett, adm'r, &c., pay & satisfy all costs that may accrue in his behalf in prosecution of a suit in circuit court of United States in district of West Tennessee, at Memphis, against Wm. Wilkins, sur'g partner of F. H. Clark & Co., on failure to prosecute his suit with effect & on failure of def't to pay said costs.

Witness my hand & seal this 7 June, 1866.

MARLAND L. PERKINS.

Return of summons.

Came to hand same day as issued and executed on James S. Wilkins, by making known the contents of the within, and leaving him a copy of the declaration.

M. T. RYDER, *Marshall.*

4 And upon the said 7th day of June, A. D. 1866, the plaintiff filed his declaration in said cause in the words and figures following, to wit:

In the circuit court of the U. States, sixth judicial circuit.—September term, 1866.

UNITED STATES OF AMERICA, *District of West Tennessee:*

SEMPLE ELLETT, ADMINISTRATOR OF THE Estate of Thos. N. Quarles, dec'sd,
vs.
JAMES S. WILKINS, SURVIVING PARTNER OF the firm of F. H. Clark & Co.

Semple Ellett, who is a citizen of the State of Virginia, and adminis-

trator of all and singular the goods and chattels and credits which were of Thomas N. Quarles, at the time of his death, who died intestate, complains of James S. Wilkins, who is a citizen of the State of Ten.,
and surviving partner of the firm of F. H. Clark & Company, of a
5 plea of trespass on the case upon promises. For that whereas heretofore, to wit, on the 6th day of June, A. D. 1866, at Memphis, to wit, at the district aforesaid, the said defendant and F. H. Clark, in his lifetime, now deceased, and whom the said defendant hath survived, became and were indebted to Thomas N. Quarles, his lifetime, in the sum of five thousand dollars for the work and labor, care and diligence, of the said Thomas N. Quarles, in his lifetime, before that time done, performed, and bestowed in and about the business of said defendant and S. H. Clark, and for the said defendant and F. H. Clark, and at their special instance and request; and also in the like sum for divers goods, wares, and merchandise, by the said Thomas N. Quarles, in his lifetime, before that time sold and delivered to the said defendant and F. H. Clark, at their special instance and request; and also in the further sum of five thousand dollars for money by the said Thomas N. Quarles, in his lifetime, before that time lent and advanced to
6 and paid, laid out, and expended for the said defendant and F. H. Clark; and also in the like sum for other money by the said defendant and F. H. Clark had and received to and for the use of the said Thomas N. Quarles, and being so indebted, the said defendant and F. H. Clark, in his lifetime, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised said Thomas N. Quarles, in his lifetime. to pay him the said several sums of money when they should be thereunto afterwards requested.

Yet the said defendant and F. H. Clark, in his lifetime, not regarding their several promises and undertakings, but contriving and fraudulently intending to deceive and defraud the said Thomas N. Quarles, in his lifetime, and the said plaintiff (as administrator as aforesaid), after the death of said Thomas N. Quarles, to which the said plaintiff, after the death of said Thomas N. Quarles, to wit, on the 5th day
7 of June, 1866, at the district aforesaid, administrator of all & singular the goods and chattels and credits which were of the said Thos. N. Quarles, deceased, at the time of his death, who died intestate, in due form of law, was granted in this behalf, hath not as yet paid the s'd sums of money, or any part thereof, to the said Thomas N. Quarles, in his lifetime, or to the said plaintiff, administrator as aforesaid, since the death of the said Thomas N. Quarles, although often requested so to do; and whereas also the said defendant and F. H. Clark afterwards, and in the lifetime of the said F. H. Clark, now deceased, to wit, on the day and year aforesaid, at the district aforesaid, became and were indebted in the further sum of five thousand dollars by account, and in like sum for money loaned by the said Thomas N. Quarles, in his lifetime, to the said defendant and F. H. Clark, and in like sum for goods, wares, and merchandise sold by the said Thomas N. Quarles, in his lifetime, to said defendant and F. H. Clark, and in like
8 sum for money paid by the said Quarles, in his lifetime, to said defendant and F. H. Clark, and being so indebted, and the said several sums of money in this court mentioned, being and remaining wholly due and owing, unpaid and unsatisfied, he, the said defendant, in consideration thereof, afterwards, and after the death of the said F. H. Clark, undertook, and then and there faithfully promised the said Thomas N. Quarles, in his lifetime, to pay him the said sums of money

in this count mentioned, when he, the said defendant, should be thereunto afterwards requested; nevertheless, although often requested, the said defendant hath hitherto wholly refused and still refuses to pay the same, or any part thereof, to the said Thomas N. Quarles, in his lifetime, or since his death, to the said plaintiff as administrator as aforesaid, to his damage five thousand dollars; and therefore he brings his suit, &c.; and the said plaintiff brings into court here the letters of administration, which give sufficient evidence to the said
9 court here of the grant of administration to the said plaintiff as aforesaid, the date whereof is the day and year in that behalf above mentioned.

McRAE & PERKINS,
Plaintiff's Att'ys.

And thereupon afterwards, to wit, at the September term, 1866, of said court, and upon the 10th day of said month, the following order was made in said cause, to wit:

SAMPLE ELLETT, ADMINISTRATOR OF THOMAS N. QUARLES, dec'd,
vs.
JAMES S. WILKINS, SURVIVING PARTNER OF F. H. CLARK & CO.
} Assumpsit.

This day came the parties, by their attorneys, and thereupon the plaintiff asked leave to amend his declaration in this cause by striking out the name of William Wilkins, who was named therein as defendant, and inserting instead thereof the name of James F. Wilkins, on whom the summons had been served, which leave was granted and said amendment made.

10 *Pleas of defendant.—Filed Sept'r 14th, 1866.*

Circuit court for the district of West Tennessee, in sixth circuit, at Memphis.—Sept. term, 1866.

SEMPLE ELLET, ADM'R, &c.,
vs.
JAMES S. WILKINS.
} Pleas of defendant.

And the defendant, by attorney, comes and for plea to the several courts in the plaintiff's declaration contained, says that the defendant did not promise in manner & form as the plaintiff, in his said several counts, has complained, and of this he puts himself upon the country; and the defendant, for further plea, says that said Quarles, at the time of his decease, had his domicil at Courtland, county of Lawerence & State of Alabama, and after the decease of the said Quarles, & long before the appointment of the plaintiff as administrator, &c., as
11 alleged in his declaration, one William Goodloe, who, at the time of the decease of said Quarles, & ever since, has been an inhabitant of the said town of Courtland, in the s'd county and State of Alabama, was duly, and according to the laws of said State, appointed adm'r of all and singular the goods and chattels, credits & estate, of said Quarles, by the probate court then & there presiding, having the power of granting administration on the estates of persons deceased, intestate, within & for the town of Courtland, the county of

Lawrence, in said State of Alabama, & letters of administration on the estate of said decedent were then and there, by said probate court, granted to said Goodloe, who accepted said trust, and then and there, by his administrator's bond to said probate court, became bound to make and exhibit to the said probate court a true and perfect inventory of all and singular the goods & chattels, credits and estate, of said deceased,
12 and also to render a true and plain account of his administration of said estate according to the laws of the said State of Alabama; and the said Goodloe did return & exhibit into the said court for the said district of Courtland, a true inventory of all the choes in action, on which moneys were due to said deceased, and of all the money which appertained to him at the time of his death, in which said inventory, so exhibited as aforesaid, are stated and mentioned all the sums of money due as claimed & alleged in the plaintiff's declaration aforesaid, from defendant to the said Quarles at the time of his descease; and the defendant avers that afterwards, and before the obtaining of letters of administration by plaintiff, as shown in his declaration, and before the beginning of this suit, he, the said defendant, at the special instance and request of the said Goodlow, as adm'r as aforesaid,
13 did pay to the said Goodlow, as such adm'r, the full sum claimed in the declaration aforesaid, & took from him, as such adm'r, a receipt in full for said sums; and the defendant avers that the said Goodlow afterwards and before the commencement of this suit, and before the obtaining of letters of adm'r by p't'f, as alleged in his declaration, did make a final settlement of his administration of said estate with and in said probate court, and did account for truly & correctly the sums so received from defendant and paid over the same to the persons & purposes entitled; and defendant avers that there were and are no creditors of said estate of said Quarles in this State, and this he is ready to verify; wherefore, &c.

HUMES, POSTEN & SCOTT,
Att's for Def't.

14 *Replication of plaintiff.—Filed March 6th*, 1867.

In the circuit court of the United States, sixth judicial circuit.—September term, 1866.

SEMPLE ELLET, ADM'R, &c.,
vs.
JAMES S. WILKINS.

And the said plaintiff, as to the plea of the said defendant by him first above pleaded, and whereof he has put himself upon the country, doth the like.

And the said plaintiff, as to the said plea of the said defendant, by him secondly above pleaded, saith that he, the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said defendant, because he, the said plaintiff,
15 saith that said Quarles, at the time of his decease, did not have his domicil at Courtland, county of Lawrence, & State of Alabama; that said Wm. Goodloe was not, at the time of the decease of said Quarles, nor has he since been, an inhabitant of the said town of Courtland, in the said county and State of Alabama; that said Goodlow was not in manner & form, as is by the said defendant in his said second

plea alledged, appointed administrator of all and singular the goods & chattels, credits and estate, of said Quarles; that letters of administration were not granted to said Goodloe in manner & form as alleged in said second plea; that said Goodloe did not return & exhibit into the said court for the said district of Courtland a true inventory of all the choses in action, on which monies were due to said deceased, and of all the money which appertained to him at the time of his death;
16 that he, the said defendant, did not, in manner and form as alleged in said second plea, pay to said Goodloe the full sums mentioned and claimed in the declaration aforesaid; nor did he take from said Goodloe a receipt in full for said sums; that said Goodloe did not, in manner & form, as is by said second plea alleged, make a final settlement of his administration of said estate with and in said probate court; that there were, and are, creditors of said Quarles in this estate; & of this he puts himself upon the country.

McRAE, PERKINS & WALKER,
Plaintiff's Att'ys.

17 And thereupon, afterwards, to wit, at the March term, 1867, of said court, and upon the 2d day of April, 1867, the following order was made in said cause:

SEMPLE ELLETT, ADM'R OF THOMAS N. Quarles, dec's'd, *v.* JAMES S. WILKINS, SURVIVING PARTNER of F. H. Clark & Co. } Assumpsit.

This day came the parties, by their attorneys; and thereupon, to try the issues joined between the parties, came a jury of good and lawful men, to wit, N. B. Sparks, R. A. Hughes, M. S. Brooks, T. A. Hamilton, Leon Truesdale, John Morrison, John M. Gunter, J. P. Finnie, W. E. Barnett, J. M. Littlefield, N. P. Pendleton, and C. H. Dorion, who, being elected, sworn, and charged well and truly to try said issue, and a true verdict render according to the evidence; and there not being sufficient time to conclude the trial of this cause on to-day, the same is adjourned until to-morrow.

18 And afterwards, at the time last aforesaid, and upon the 3rd day of April, 1867, the following further order was made in said cause, to wit:

SEMPLE ELLETT, ADM'R, &c., *vs.* JAMES S. WILKINS. } Assumpsit.

This day came the parties, by their attorneys, and also the jury heretofore impannelled in this cause, when, after hearing the evidence and the argument of counsel, there not being time to conclude the trial on to-day, the same is continued to to-morrow morning.

And afterwards, on the 4th day of April, 1867, the following further order was made in said cause, to wit:

SEMPLE ELLETT, ADM'R, *v.* JAMES S. WILKINS. } Assumpsit.

This day came the parties, by their attorneys, and also jury empan-

19 nelled in the cause, and said jury having been charged by the court, and having been out to consider of their verdict, returned into court, and report that they cannot agree upon a verdict; when, by consent of parties, N. B. Sparks, one of said jury, is withdrawn from his fellows, and the ballance of the jury discharged from the further consideration of this cause, and a miss-trial entered therein, and the cause continued to the next term of this court.

And thereupon, afterwards, to wit, at the September term, 1867, of said court, and upon the 6th day of September, 1867, the following order was rendered in said cause:

SEMPLE ELLETT, ADM'R OF THOMAS N. Quarles, dec's'd, *vs.* JAMES S. WILKINS, SURV. PART. OF F. H. Clark & Co. } Assumpsit.

This day came the parties, by their attorneys; and thereupon to try the issues joined between the parties, came a jury of good and
20 lawful men, to wit, W. H. Eader, Miles Owen, James W. Todd, Sanford Bell, W. T. Rice, M. T. Ryder, James McWilliams, James Hess, C. S. Cooper, J. L. Sharp, Wm. Simpson, and John Chilton, who being elected, tried, and sworn well and truly to try said issue and a true verdict render according to the evidence, and, after hearing the evidence, there not being time to conclude the trial on to-day, the same is continued to to-morrow.

And upon the 10 day of September, 1867, the following further order was made in said cause:

SEMPLE ELLETT, ADM'R OF THOS. N. QUARLES, dec's'd, *v.* JAMES S. WILKINS, SURVIVING PARTNER OF F. H. Clark & Co.

This day came the parties, by their attorneys, and also the jury hitherto empannelled in this cause, and the consideration of this cause is resumed from its postponement on Friday, the 6th inst; and, the evidence having been concluded, the argument of counsel was heard, and the court reserved its instructions to the jury.

21 And thereupon, afterwards, to wit, at the aforesaid September term, 1867, and upon the 12th day of said month, the following judgment was rendered in said cause:

SEMPLE ELLETT, ADM'R OF THOMAS N. Quarles, d'd, *vs.* JAMES S. WILKINS, SURVIVING PARTNER OF F. H. Clark & Co. } Assumpsit.

This day came parties, by their attorneys, and came also the jury hitherto empannelled in this cause, to wit, W. H. Eader, Miles Owen, Sanford Bell, W. T. Rice, M. T. Ryder, James McWilliams, James Hess

C. S. Cooper, J. L. Sharpe, Wm. Simpson, John Chilton, and James W. Todd; whereupon the judge proceeded to give his instructions to the jury; and, the jury having taken the case, return into court and say they find for the plaintiff, and assess his damages at $3,455 22, thirty-four hundred and fifty-five dollars twenty-two cents.

It is therefore considered by the court that plaintiff recover of defendant the sum of thirty-four hundred and fifty-five dollars twenty-two cents, the damages so assessed by the jury as aforesaid, and also the costs of this suit; and that execution issue.

22 And afterwards, to wit, at the term last aforesaid, and upon the 18th day of September, 1867, the following motion was entered in said cause:

SEMPLE ELLET, ADM'R OF THOMAS N. Quarles, dec's'd,
vs.
JAMES S. WILKINS, SURVIVING PARTNER of F. H. Clark & Co. } Assumpsit.

This day came the defendant, by his attorney, and entered a motion for a new trial in this cause, and said motion was continued until a subsequent day of this term.

And afterwards, to wit, at the March term, 1868, of said court, and on the 17 day of April, 1868, the following order was made in said cause:

SEMPLE ELLETT, ADM'R OF THOMAS N. Quarles, dec's'd,
v.
JAMES S. WILKINS, SURV. PART. OF F. H. Clark & Co. } Assumpsit.

This day came on to be heard the defendant's motion for a new trial, entered herein at the last term of this court, and, the same being argued by counsel & fully understood by the court, it is ordered by the court that said motion be overruled; and thereupon the def't tendered his bill of exceptions, and asked that the same be signed and sealed, and made a part of the record in the cause, which was accordingly done.

23 *Bill of exceptions.*

In the circuit court of the United States, district of West Tennessee.

SEMPLE ELLETT, ADM'R OF THOS. N. QUARLES, dec's'd,
vs.
JAS. S. WILKINS, SUR. PARTNER OF THE FIRM of F. H. Clark & Co. } No. 107.—Bill of exceptions.

Be it remembered that, on the day of September, 1867, this cause came on for trial before Hon. Connally F. Trigg, judge of the district court of the United States for the district of West Tennessee, presiding in the circuit court of the United States for the sixth judicial circuit, at Memphis, Tennessee.

The plaintiff read his letters of administration, marked Exhibit A, from county court of Shelby County, Tennessee, to Semple Ellett, as follows, to wit:

24 "EXHIBIT A."—*Semple Ellett, administrator of Thomas N. Quarles, deceased.—County court, June term,* 1866.—*Administrator's bond.*

STATE OF TENNESSEE, *Shelby County:*

We, Semple Ellett, Edmond M. Apperson, and G. V. Rambant, are bound to the State of Tennessee in the sum of eight thousand dollars.

Witness our hands and seals, this 4th day of June, 1866.

The condition of this obligation is such that, whereas the above-bound Semple Ellett has been appointed administrator of Thomas N. Quarles, deceased:

Now, if the said Semple Ellett shall well and truly perform and discharge all the duties and obligations which are or may be required of him by law to be performed and discharged as such administrator, then this obligation shall be void; otherwise to be and remain in full force and virtue.

25

SEMPLE ELLET. [SEAL.]
EDMUND M. APPERSON, [SEAL.]
By M. L. PERKINS, *his Att'y in Fact.*
G. V. RAMBANT, [SEAL.]
By M. L. PERKINS, *his Att'y in Fact.*

Witness:
JNO. LOAGUE, *Clk,*
By J. WEAVER, *D. C.*

Approved by the court, June term, 1866.
THOMAS LEONARD, *Judge.*

Letters of administration.

STATE OF TENNESSEE, *Shelby County:*

To Semple Ellett, a citizen of said county:

It appearing to the county court, now in session, that Thomas N. Quarles has died, leaving no will, and the court being satisfied as to your claim to the administration, and you having given bond and qualified as directed by law, and the court having ordered that letters of administration be issued to you:

26

These are therefore to authorize and impower you to take into your possession and controul all the goods, chattels, claims, and papers of the said intestate, and return a true inventory thereof to our next county court; to collect and pay all debts, and to do and transact all the duties in relation to said estate which lawfully devolves upon you as administrator, and after having settled up said estate, to deliver the residue thereof to those who are entitled by law.

Witness Jno. Loague, clerk of said court, at office, this 4th June, 1866, and 90th of American independence.

JNO. LOAGUE, *Clk,*
By J. WEAVER, *D. C.*

STATE OF TENNESSEE, *Shelby County:*

I, John Loague, clerk of the county court of said county, certify that the within is a correct copy from the records on file in my office.

Given under my hand & seal this 11th Sept., 1866.

JNO. LOAGUE, *Clk,*
By J. WEAVER, *D. C.*

27 Plaintiff then introduced and read the following account, marked—

"*Exhibit B.*"

MEMPHIS, *Jan'y*, 1866.

T. N. Quarles bo't of F. H. Clark & Co.—

Jan'y 4.	To cash		225 00	
5.	" "		75 00	
	" d. b. shot-gun		100 00	
	s., p., & p. flask		6 00	
	1 gold guard chain		10 00	
31.	To cash p'd Goodloe		1,000 00	
"	" " " Afflick		75 00	
"	" " Dr. E. A. White		341 00	
Feb'y 21.	" " " Goodloe		2,455 22	
				$4,287 22
1866.				
Jan'y 1.	By balance on ac		$3,278 78	
3.	" cash		1,000 00	
Feb'y 21.	" interest		8 44	
				$4,287 22

Which was proven to be correct, and which, by the admission of both the parties to the cause, shows a ballance due from F. H. Clark & Co., to the intestate Quarles, on the 31st day of January, 1866, of $3,455 22.

28 Plaintiff then introduced and read certain letters marked "Exhibit C," "Exhibit D," "Exhibit E," "Exhibit F," "Exhibit G," "Exhibit M," & "Exhibit N," seven in number, all of which were proven to be genuine, and are as follows, to wit:

"*Exhibit C.*"

MEMPHIS, TENN., *June* 29, '65.

DEAR AUNT: Your most welcome letter came to hand after a long time out. I wrote to Cousin Julia by Bunt Byrume, and requested her to say to you that you could use the money. So soon as the railroad is repaired, I want to come up and settle the business left by mother. All letters from any of you give me but very little information as regards her death. None yet have said where her last resting place is, & what her last words were to me. I am trying to hear from Virginia, and think I will hear very soon. It will be necessary for me to
29 go there as early as I can. The place where I was born has fallen to me since the of Geo. B. Mill, and it is not attended to it may be sold for taxes. I shall write again to some one in Richmond. I have learned that Thomas Deluvan is still in business on Broad street.

Give my love to Cousin Julia, her husband, and all the servants. How is Jerry, Jane, and all? Tell Mr. E. M. Snoope I would be glad to receive a letter from him.

Remember me to him and all enquiring friends.

My health is good.

Write soon by the way of Huntsville.

Your affec. nephew,

T. N. Q.

30 "*Exhibit D.*"

MEMPHIS, TENN., *June* 20, '65.

DEAR AUNT: Your much welcomed letter came to hand by due course of mail, but was a long time about it. It was received some days since, but an opportunity to send made me defer.

This will be handed you by Mrs. Branch. The request you made in your letter, I will freely grant.

I want, as soon as the roads are opened, to come up and settle the business matters of mother's, & assist you in any way I can.

You will please get the papers all together as well as you can by the time I come, and write me what she said at her last; strange to say no one has said where she was buried. I have much to say when I come up. The parties are waiting for this, and I must close with love to all. I wrote a few days since to Julia by Burt Byrume. Write immediately to

Your affectionate nephew,

T. N. Q.

31 "*Exhibit E.*"

Mr. SEMPLE ELLETT, *Taylorsville, Va.:*

DEAR UNCLE: I have received but one letter from you since I was in Va., and I believe have answered that, & I would like to know how it is I cannot get some one to favor me with old Va. news occasionally, and knowing no one that I had sooner hear from than yourself & family, I write hoping soon to hear from you, &c.

I have just heard from mother, & she they are all well in Alabama. I suppose by this time you have seen Uncle Wm. and Cousin Julia, who are on a visit to Va. I asked Uncle Wm. to see what Mr. Minor is doing. I think he has been rather tardy in looking into the estate of grandfather and grandmother. I rec'd a letter from him some month since. He has examined the records in regard to their wills, and holds out a
32 probable chance of my having some interest, more particularly in grandmother's estate, and some in the other, & I had hoped you would see to it for me, knowing my situation as you do, and my inability to be in Va. to attend to it personally.

I cannot afford to spare the time from the store. If I quit my situation I would be on expenses all the time, and that would not be well for me now that I have a good situation and can keep it; still, I am trying to do better.

I want to, if I can, to make arrangements to go in the grocery & commission business in a house in this city as a partner in the concern, and I hope I can do so this summer.

If you have seen Mr. Minor, try and get him to have the thing in court and through as soon as possible. I do not want to wait all of the "law's delay," say, for 2 or 3 years. I ask you, believing you will cheer-
33 fully do this much for me. I wish you to write me on this subject soon, if you please.

I do not know of any news to write you from this quarter of the globe. The Mississippi River is yet very high at this point, and is miles wide opposite; much of the country has, and is, overflowed below.

Our city is all alive now with politics; also with strangers who are going east.

We are now just beginning to come into the fruit season; apples, cherries, &c.; strawberries are nearly gone; the planters have fine stands of corn & cotton. I think you had better quit the sand and gravel hills,

& come to West Tennessee, or Arkansas. You can make double the money with half the work.

Hoping you will kindly remember me to Aunt Bettie & the children, I am, as ever, very respectfully,

T. N. QUARLES.

MEMPHIS, *May 23d*, '59.

34 *"Exhibit F."*

DEAR COUSIN: I look not on death as some who are unwilling to die. I have a comfort left that, though it be in the power of the weakest arm to take away life, it is not in the strongest to deprive us of death. God would not exempt himself from that, the misery of immortality in the flesh; he undertook not that was immortal. Certainly there is no happiness within this circle of flesh, nor is it in the optics of those eyes to behold felicity; the first day of our jubilee is death.

There is no misery in man save within himself, and so, indeed, in his own sense, the stoic is in the right. And, dear cousin, the winged messenger of death stops not with his sickle; he has removed from among us our much loved aunt, our dear aunt Purnelia. She died on the evening of December 1st, 1865, after a long illness with fever. Two weeks before she died she importuned her friends with whom she had
35 been staying with, to write to me to come, as she was anxious to see me.

I did not receive the letter until I had heard a rumor of her death, therefore waited a day or two, and the rumor was confirmed. So I have not been up, as after death my presence could not avail any thing.

Cousin Julia and her husband (Mr. William Goodloe) were absent from home at the time.

Cousin Julia knew of her illness, but her child also was very sick, and she had to remain with it; so our dear aunt died without a relation to weep above her, as I expect to; nevertheless, as I understand from Mr. Goodloe, she received every care that one could wish for. He reached home that day and superintended her burial. Aunt was interred in the family burial grounds alongside of Uncle Harman.

I know she was well cared for and probably better than we could, with the means we had at hand.

Thanks, "'Tis not all of life to live, nor all of death to die."

Aunt died at Flower Hill, six miles from Cousin Julia's place.
36 How often I think of her and myself. Mark the comparison! (Save she is married & has a little babe & a husband to love) she has none to love, none to caress, no one to share this hearty tenderness.

Ah! now Cousin J. is married I feel as though I was lett in this wide western world, and no one to care for me, save an old friend of my mother's, who some time since came into the store, and said, "Howdy, Thos.? I came in to see you;" she said, "if you get sick or want any thing, let me know and I will be a mother to you."

This lady is Mrs. Gov. Jas. C. J., which was a coincidence which occurred about the time of my mother's death.

Mrs. J. came into the store, & when I spoke to her, I said, "Howdy, mother?" which was about the time of my mother's death, and I had not heard of it for two months after. Indeed, she is to me now like a mother.

Cousin, I took (under the circumstances) the liberty to read your letter to auntie, which I shall answer more fully, as I shall on Jan'y 5,
37 '66, start for Alabama, to Coz. Julia's, & when we are together I can write more fully. While here I am overdone with work; I

will remain in Alabama about four weeks. You may direct your letters to Memphis, "care of F. H. C. & Co.," then I will get them sooner.

I do not see why you should not write to me, at least occasionally. You must not expect one who is at all times busy to write punctually. Write about all of our friends & relations, their whereabouts, what they are doing, and whether they are living or not; who was in the war, and who was killed or wounded. I hope Mans was on our side.

"*Exhibit G.*"

MEMPHIS, *April 20th*, 1866.

SEMPLE ELLET, Esq.:

D'R SIR: I had a call to-day from Mr. Stebbins, asking in your name in regard to the death of Thomas Quarles.

38 On or about the 7th of Jan'ry, '65, Thomas started forCourtland, Ala., to attend to the property left by his mother, who died upwards of a year ago; reached there, and in the course of a visit to his cousin, Mrs. Wm. Goodloe, got up a duck hunt. They fixed the blind; both anxious to get first bird, Thomas ahead, when Goodloe's gun went off, and the ball lodged in his, Thomas', shoulder. The 3rd day after the wound eresyplis set in, followed by lockjaw, and carried him off on the 4 day.

I learned from Mr. Goodloe that Thomas made verbal request to his cousin in regard to disposition of his property.

Goodloe confirmed himself as administrator, and took possession of his personal property here.

Thomas was shot on the 18th Jan'y, & died on the 24th, '65.

Respectfully, yours,

JAMES S. WILKINS.

39 "*Exhibit M.*"

MEMPHIS, *Feb'y 23d*, '66.

SEMPLE ELLET, Esq.:

D'R SIR: Yours of the 10th instant is at hand. In reply I can only inform you this much. At the time of his death he was in our employ. Some few days after his death Mr. Wm. Goodloe came here with letters of administration, properly made out, & took possession of his effects & moneys to the am't of some $3,500. I learn from Wm. that Thos. had other moneys due him, & that he should proceed to collect. Our Mr. Clark died on 21st Jan'y, & Thomas on the 24th. Not having any knowledge of Thomas' outside matters in regard to his mother's estate, I cannot answer. Wm. told me that Thomas told his cousin Wm.'s wife that he wished his property equally divided amongst his next of kin. Wm. is the only one who can give you full answers to the questions you ask.

Trusting you will receive such a statement from him as will be satisfactory, I am, yours, respectfully,

JAMES S. WILKINS,
Firm of F. H. Clark & Co.

40 *Exhibit "N."*

Mr. SEMPLE ELLET, *Taylorsville, Virginia:*

DEAR UNCLE: By this you will see that I am again in Memphis.

From Richmond I visited the different eastern cities. In Washington I met with many acquaintances. While there I visited the different places of interest, and then proceeded on our journey, stopping at each city long enough to see all the objects of interest.

We arrived at last in New York, and that is the city of all so long as you remain on Broadway. I staid there about a week, and then went [and then went] directly to Niagara Falls. They are truly grand. I will not attempt to describe. Came then to Buffalo, and through Ohio to Cincinnati & Louisville to Uncle Otter's. I found him quite unwell; he had a cough. Aunt Purnelia never looked to be in better health.

I wish you would come out from that old country; there is bet-
41 ter land over here in Arkansas at $5 per acre than you can find in Va. Uncle William will come also. Each of you might buy a place adjoining, and make a pleasant neighborhood. Mr. Otter will come also. I wish you would write me word who received the 20,000 dollars, and when he got it. Did he get it at Hanover Court House of the court? How much did each one receive of the 5,000 which he divided among the heirs? Remember me kindly to Aunt Bettie. I hope to repay your kindness some day, &c.

Remind me to all, and write soon to me. Do not put it off—old Va. style.

Truly, yours, &c.,

T. N. QUARLES.

MEMPHIS, *Sept.* 16, '58.

I send you a paper. Look at the lands advertised, & see if you will not come out. Uncle Wm. wants to move where he can make a bale of cotton to the acre and 10 bales to the hand, &c. These lands can be bought at a low figure, and only 10 per c. cash on the purchase-money; balance in 5 years, &c.

42 The defendant offered to read the deposition of William Goodloe, exhibiting the letters of administration issued to him by the probate court of Lawrence County, Alabama, to which the plaintiff objected upon the ground that said court had no jurisdiction, it having been admitted by def't that Quarles died 3 or 4 days before the date of said letters, and that the said letters were void.

The court overruled the objection, and the letters of administration and deposition marked "Exhibit H" were read as follows:

43 "EXHIBIT H."—*Deposition of William Goodloe.*

Dist. of W. Ten., circuit court U. S. of America.

SEMPLE ELLET, ADM'R OF THOS. N. QUARLES, dec's'd,
vs.
J. S. WILKINS.

Be it remembered that on this 11th day of March, 1867, at the office of Humes & Poston, in Memphis, the deposition of William Goodloe was taken by consent of parties, plaintiff and defendant, before me, Fean Penn, a United States commissioner duly commissioned, &c., to be read on behalf of def't in the above-named cause. After having been duly sworn, the witness deposed as follows:

Question 1. By defendant. If you received money from def't Wilkins, as connected with Thomas Quarles' estate, will you please state in what capacity you received it, exhibiting your authority as well as the amount ascertained to be due said Quarles, & how & in what way
44 was the amount accounted for; what you have done with the money received, and what amount, if any, you have received in this behalf as a matter of administration?

Answer. Thomas N. Quarles died at my house in Lawrence County, Alabama, prior to the 27th day of January, 1866, leaving personalty in that county; on that day I administered on his estate in said county, & letters of administration were issued to me of that date, the original of which is here exhibited as part of this deposition. I gave bond and surety as required by law.

After this I went to Memphis, Ten., and exhibited my authority and a certified copy of my administration bond to defendant, and demanded payment of him of what he owed said Quarles. He showed me his books on which a balance appeared in Quarles' favour, entered in his own handwriting as former book-keeper of F. H. Clark & Co., amounting to the sum of $3,455 22, which sum was paid to me as such administrator by def't Wilkins about Feb., 1866. I took this sum and included it in my inventory returned to the probate court of Lawrence Co., Ala.

I have loaned out a part of this money on what I believed to be good security, and a part of it is in my own hands; that is, I am accountable for it; as in part of it. I have resigned my office as administrator. Thomas Masterson has charge of the business.

The above-named inventory was duly filed by the court as an office paper.

And further this deponent sayeth not.

WILLIAM GOODLOE.

As counsel for plaintiff I waive notice, and consent to the taking of this deposition, but except to it as irrelavant, and as having been given by an incompetent witness.

D. K. McRAE.

I certify that the foregoing deposition was taken before me, and signed by the said Wm. Goodloe in my presence, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

{ DIS. WEST TENNESSEE. } In testimony whereof, I have hereunto set my hand, and official seal this eleventh day of March, A. D. 1867.

FEAN PENN,
U. S. Commissioner.

Commissioner fees, $2 00.

These are the letters of administration referred to in the annexed deposition.

FEAN PENN, *U. S. Com.*

Letters of administration.

THE STATE OF ALABAMA, *Lawrence County, ss:*

I, Charles Gibson, judge of the probate court of said county, certify that letters of administration on the estate of Thomas N. Quarles, dec'd, were on the 27th day of January, 1866, granted to William Goodloe, who has duly qualified and given bond as such, and is authorized to proceed accordingly. Dated this 27th day January, 1866.

CHARLES GIBSON,
Judge of Probate Court, &c.

The def't then introduced a certified transcript from the records of the probate court of Lawrence County, Alabama, showing

William Goodloe's inventory of the intestate's effects filed with said court & his final settlement with the court, said inventory exhibiting the amount of thirty-four hundred and fifty-five $\frac{22}{100}$ dollars received from the defendant by said Goodloe as administrator, and showing that the same was accounted for in his settlement with the court.

This transcript was received without objection and the same, marked "Exhibit J," was read as evidence as follows:

48 EXHIBIT J. *(Copy.)—Inventory of property belonging to est. of Thomas N. Quarles, dec's'd, on or about 27th,* 1866.

1 bedstead	20	00
1 spring matrass	12	00
1 hair & two pillows	7	00
1 musquito bar	2	50
1 lot bed clothing	29	50
1 bureau	20	
1 washstand	15	
1 trunk	6	
1 lot tin	1	50
1 shot-gun & accoutrements	37	00
2 cans powder & box wads	2	50
1 tube wrench		50
1 large cronometer watch	80	
1 medium " "	60	
1 trigued Geneva " & chain	30	
1 gold chain	30	
1 diamond pin (cross)	30	
1 lot gold rings	10	
49 1 sett solid gold sleeve buttons	5	
3 breast pins for	10	
1 tobacco can	1	
2 p'r boots, @ 5 00	10	
1 " slippers	1	50
2 lots clothing for	5	00
1 silk h'dk'f	2	00
6 cambric h'dk'fs	3	
	431	00
1 leather cup		25
2 cravats		50
31 collars	4	00
12 cuffs	1	50
2 bot's indel. ink		10
1 lot cartridges		50
$3\frac{1}{2}$ doz. pearl buttons	1	
1 tablet		25
1 shoulder brace	1	50
1 money belt	1	
5 br'd towells	2	50
3 cravats	3	00
5 col'd shirts	7	50
24 p'r Lisle thread socks, 25 c	6	00
10 lin. brown shirts	18	00
1 nett jacket	2	

	1 suit cassimere, dark		25
	1 cloth coat		15
	1 cas. pants		5
50	1 cass. coat		2 50
	1 second-hand vest		1
	1 cut velvet vest		5
	1 sec. hand velvet "		1 50
	1 white silk vest		1
	1 grey vest		25
	1 p'r light cor. pants		1
	1 " " " ch'k		2
	5 Mersailes vests		4
	1 satin vest, white		1 50
	2 under shirts (cot.)		1 50
	4 p'r pants		8 00
	5 p'r drawers		2 00
	1 valise		1
	1 truoter pistol		15
	1 rubber coat		5 00
			577 85
	To cash on hand		100
	" am't cash from F. H. Clark & Co., as per certified ac	3,455	
			4,132 85

51 *William Goodloe, adm'r of estate of Thos. N. Quarles, d'd, in acc't with the probate court of Lawrence County, Ala., on final settlement of his administration.*

1866.			
Jan'y 31st.	To cash from F. H. Clark & Co		$1,000 00
Feb'y 21.	" " " "		2,455 22
	Cash on hand as p'r return		220 00
	To am't first inventory ren'd		587 85
			4,263 07
1866.	By error in 2d inventory, cash on hand		$100 00
Jan'y 25.	By am't p'd hands digging grave		3 00
27.	By am't stamps on letters administration & bond		2 05
" "	certificate, seal, & transcript		1 25
Jan'y 31.	" " p'd exp. p'ck'ge from Memphis		1 50
30.	" " G. H. Becker's bill		35
31.	" " Lewis Cutin's ac.		193 35
Feb'y. 3.	Dr. McMahon's bill		47 50
5.	freight on R. R.		22 50
6.	For hawling		5 00
Jan'y 31.	Cash p'd expenses to Memphis & return		33 75
Feb'y 23.	" " " " " "		33 75
Mar. 24.	" " Dr. H. W. Bentley's acc't		26
Ap'l 16.	" " sh'ff commission on appointment		2 50
26.	" " Dr. J. B. Coon's bill		8 12
May 31.	" " expenses to Memphis & return		25 75
June 8.	" " H. C. Jenk's acc't		22
16.	" " W. H. Goodloe's acc't (allowed)		118 76
			681 78
52	Am't bro't forw'rd		681 78

June 16.	By am't att'y fees	150 00
		831 78
Feb'y 24.	By am't loaned Mattison & Mickell	500
27.	" " C. S. Mattison	200
Mar. 9.	" " J. L. Goodloe	325
	Doubtful claim on S. E. Garth	250
	" " " A. B. Burr	750
		2,025 00

STATE OF ALABAMA, *Lawrence County:*

I, I. H. McDonald, judge of probate in and for said county, hereby certify that the foregoing, purporting to be the inventory of the personal property of the estate of Thomas N. Quarles, deceased, as returned to the probate court of said county, by William Goodloe, administrator of said estate of Thomas N. Quarles, and of the account filed by said administrator for final settlement of his administration, are true and correct, and that the said personal property has been turned over to, and reinventoried and sold by, the administrator debonis non of said estate, and that said settlement of said William Goodloe is still
53 pending in this court, and litigated, and that the items, both debits and credits, are precisely in accordance with said account, except as to the item of interest charged and claimed by said Goodloe in said account against himself in the debits thereof, as the same said inventory appears of record and account filed in my office.

Given under my hand, with the seal of office affixed, this 15th day of March, 1867.

[SEAL.] I. H. McDONALD,
Judge Pro. Court.

The def't then proved that there were no creditors or distributees in the State of Tennessee.

54 The defendant introduced I. A. Afflick, J. Barrett, Mr. Wilkins, and A. Brooks, who testified (all of them) before the jury that the decedent, Quarles, was reared in Lawrence County, Alabama, where his mother, a widow, resided up to the date of her death, a short time before the death of Quarles; that Quarles came to Memphis, Tennessee, some ten years before his death, a youth under twenty-one years of age, and entered the employment of F. H. Clark & Co. as a clerk, upon a salary, and so continued up to a short time before his death. He kept a room and necessary furniture, and boarded at various boarding houses and restaurants in the city, and that when he went to Lawrence County, Alabama, to settle up his mother's estate, with the declared intention of returning to Memphis to resume his duties as clerk in the house of Clark & Co.; but they all also testified that they were intimate
55 with Quarles during his continuance in Memphis, and heard him frequently declare that he did not consider Memphis his home, but he still regarded Lawrence County, Alabama, as his home, and he intended ultimately to return there to reside permanently; that they had known him to refuse to vote at elections held in Memphis, Tenn., for municipal, county, and State officers, upon the express ground that he was not a citizen of the State of Tennessee, but a citizen of Alabama. They also testified that a short time before his death he declined to

register as a voter under a recent act of the legislature of Tennessee regulating the right of voting, and he did so upon the express declaration at the time that he was not a citizen of Tennessee, but of the State of Alabama. Quarles was an unmarried man, without family. He died in Lawrence County, Alabama.

This was all the evidence.

The court charged the jury as follows:

56 *Charge.*

In January, 1866, Thomas N. Quarles, a resident of Memphis, went to Alabama, and there died on the 24th of that month.

On the 27th, William M. Goodloe, a citizen of Alabama, took out letters of administration on his estate in Alabama, and afterwards came to Tennessee, where the defendant, Wilkins, then lived, and, without procuring any letters of administration, collected a debt of $3,455, which Wilkins owed to Quarles upon account, and which the defendant voluntarily paid, and Goodloe thereupon gave him an acquittance of the debt. Subsequently the plaintiff, Ellett, obtained letters of administration in the county of Shelby, Tennessee, the domicil of the debtor, Wilkins, and commenced this suit to recover the debt due to his intestate.

The defendant pleads non assumpsit and payment to the administrator, Goodloe. The plaintiff replies traversingly that Goodloe was administrator, and traversing the plea of payment.

57 It is contended by the plaintiff—

First. That the letters of administration obtained by Goodloe in the ordinary court of Alabama, on the 27th of January, 1866, are absolutely void, because they were granted before the lapse of fifteen days after the death of the decedent.

Second. That the statute law of Tennessee, which prohibits any one from presuming to enter on the administration of a deceased person's estate, is a local law, prescribing rules of property, and therefore within the 34th section of the "judiciary act," which this court must conform to as a rule of decision.

Third. That the payment by Wilkins to Goodloe having been a voluntary payment by a debtor at his domicil to a foreign administration, is invalid, as against an administration afterwards appointed at such domicil, and is no discharge of the debt.

The case has been argued with care and with great ability, and I have investigated the questions presented with much and anxious de-

58 liberation in the short time allowed me. The section of the code of Alabama, 1675, prescribes that "no administration must be granted until after the lapse of fifteen days after the death is known."

If this section is to be construed into prescribing the condition of jurisdiction in the court, then, inasmuch as it is admitted that decedent had not been dead fifteen days, the action of the court would be beyond its authority and wholly void; and if void would be collaterally impeached. But I am of the opinion that such is not the case. Section 1667 of the code bestows the jurisdiction upon the ordinary court of Alabama, and sets forth precisely the cases in which administration is to be granted; and section 1675 is a mandate addressed to the court after the jurisdiction is acquired in a case falling within one of the specifications of section 1667. I am the more confirmed in this opinion because the latter clause of section 1675 gives to the court power to try the

59 case and examine on proof as to the time of death and place, and whether the other incidents necessary to jurisdiction had occurred

In this point of view the action of the court being in the exercise of a jurisdiction, though wrongly exercised, would not be void, but merely improvident, which might be revoked, but cannot be collatterally impeached.

I decline, therefore, to allow the first instruction asked, but instruct you that Goodloe is to be considered an administrator only appointed in Alabama, as his letters purport. As to the second instruction prayed for, I am not of the opinion that the decision of the Tennessee supreme court is binding upon this court as a rule of decision. And I do not regard the section of the code of Tennessee, referred to by the counsel of the plaintiff, as intending the comprehensive signification assigned to it.

It is like the statutes of other States in this particular, and does no more than require that a person administering upon the estate of the deceased must have authority to do so by some letters of administration.

60 If it meant otherwise than this, and were entitled to the full favor claimed for it, it would be an announcement that the comity of the State has withheld from all foreign administrations, which it certainly has not contemplated. The second instruction, therefore, is also disallowed.

The great question in the case is, had the foreign administrator any right or authority to come into the State of Tennessee and there collect a debt due the intestate in the home of a debtor, and, as administrator, give a discharge to the debtor, so that no administrator subsequently appointed in this State can recover the same.

I am not sure but that this immediate question is one of the first impression in the courts of the United States.

At all events, it has never obtained a settlement in the Supreme Court of the United States, and I am left, therefore, to judge of the question upon general principles, with the aid of such persuasive authorities as the decisions of the State courts afford.

It has been settled beyond dispute that a foreign administrator
61 can neither sue nor be sued as such in the courts of another State. He has no right to use the courts of a foreign State by virtue of his letters; and as he has no right to collect the assets by suit, he has no responsibility for their non-collection. In so far as he can compel a payment of the assets into his hands, or as administrator can be held to account for their reception, he is a stranger whom the courts do not know.

Judge Story, in his careful analysis of the conflict of laws, sums up the reason of the thing in few words: "If he could thus collect the assets he might withdraw them out of the jurisdiction, and force creditors to follow him into a foreign government to obtain satisfaction of their claims, which would be unreasonable and unjust."

Much reliance has been placed by defendant's counsel upon the case of Doolittle vs. Lewis, reported in 7th Johns., page 45, as authority for the validity and sufficiency of such voluntary payment.

62 But that case furnishes no such decision, and its dictum does not by any means warrant the use which has been made of it. I am very well aware that in several cases the dictum of that case has been held to uphold the principle broadly asserted that a voluntary payment by a debtor, in his own domicile, to a foreign administrator is valid; and the release of such administrator will be a discharge as against an administrator subsequently appointed in a domicil of such debtor. But no such dictum was uttered in that case.

The facts of the case were these: A creditor domiciled in Vermont, died there, holding a bond executed by a debtor domiciled in New York,

which bond was secured by a mortgage on real estate situate in New York. The administrator appointed in Vermont finding there the bond and mortgage, and seeing that the mortgage in terms recited "a special power authorizing the mortgagee, his executors, administrators, and assigns, in default of payment, to sell and convey the mortgaged
63 premises," came to New York, advertised, and sold the land without taking out letters in New York.

The chancellor held the sale valid for the reason that the "authority to sell was derived from the power and not from the court of probates in Vermont." This is his very language, and for this reason, says the chancellor, "I am induced to think that this case does not fall within the meaning or reason of the rule requiring the personal representatives of an estate to obtain authority from the court of probates here, before they are competent to assert rights in a representative character in our courts. The whole proceeding was extra judicial, and founded on private agreement" And then he goes on to say: "An executor or administrator of a creditor dying in another State and becoming lawfully possessed, as part of his assets, of a bond given, secured by mortgage upon lands in this State, is competent, as I should apprehend, to receive payment and give an acquittance without first resorting to the court of probates here."

64 This is the sense of the dictum.

Does it meet the case here?

Manifestly not. It preceeds a case specified, and simply applies a dictum to the special facts. But when that case deals with general principles, it asserts doctrines wholly adverse to the defence here, for it says: "It is well settled that a party cannot sue or defend in our courts as executor or administrator under the authority of a foreign court of probate. Our courts take no notice of a foreign administration. If it were otherwise, the assets might be drawn out of the State to the great inconvenience of the domestic creditors, and be distributed perhaps on very different terms according to the laws of another jurisdiction."

There is the principle and the reason for it; and I cannot conceive how, if our courts refuse to notice a foreign administrator so as to refuse to allow him to collect assests here through the law process because of the inconvenience to follow, that they will allow him by private agreement with the debtors to produce the very inconvenience by
65 withdrawing the assets to another jurisdiction. The reason is much stronger against this policy than the other; for if he could proceed through the courts and were obliged to do so, creditors and distributors would have notice; whereas if he could collect by private arrangement, the withdrawal, as in this instance, would be effected without any opportunity to interrested parties, to be protected here where the assets are. Although there may be "late dicta" in the New York court of appeals affirming the opinion of Chancellor Kent, to be as the counsel for the defence contend, as I said before, they are not justified by the case. And I am more constrained to differ with these cases because in a case in New York, Brown v. Van Horne, 10, page 549, the court had the opportunity to decide the very question at issue and declined to do so. (See the opinion of Chancellor Walworth at page 557.)

The case from North Carolina, Nesbit vs. Stewart, 2 Dev. & Batt., 24, is no more a justification of the doctrine of the defence than the others.

66 That was an action brought by a citizen of Georgia against the defendant residing in North Carolina as executrix "de son tort."

The facts were as follows:

The deceased, domiciled in Georgia, died at the house of his mother in North Carolina, and she found $400 on his person, which she took care of, and handed over to the administrator appointed in Georgia. The court simply decided that she was not an executrix in her own wrong. "She took charge of the money to prevent its being wasted, and placed it in the hands of the proper representative of the deceased, in the State where he was domiciled and where the plaintiff is domiciled."

And the court certainly quotes the dictum of Kent as here contended for. But even in that very case the judge clearly intimates that her liability, innocent as she was, might be altogether different, if it had been a North Carolina creditor who had sued, for he says:

67 "Whatever might be the liability of the defendant to a North Carolina creditor," &c.

Now it is plain that there would be no room for this language if the receipt of the Georgia administrator were an absolute acquittance.

These are the authorities submitted to me by the defendant's counsel, and they are met by the absolute decision of the supreme court of Tennessee, pronounced by Judge McKinney, whom we all respect as a most accurate & able lawyer, in a case on all points with this.

The case of Young, administrator, vs. O'Neal, is precisely parrallel with this. (See 3rd Sneed, 59.) And the court held in direct and unequivocal terms that the voluntary payment by the debtor in his own domicile to a foreign administrator, who had not clothed himself with the proper authority, by taking out letters, would not be valid as against all administrators subsequently appointed.

68 That such foreign administrator wasa stranger, unrecognized by the law, and could give no discharge. It will not do to say that the Tennessee court overlooked the case of Doolittle vs. Lewis. It would be unwise to say this of Judge McKinney in any case falling to his charge for decision. But we know that in the case of Swaney vs. Scott, administrator, 9 Humphreys, 327, he had brought under advisement the cases from Virginia and North Carolina, and had given the proper and accurate scope of decision in the Doolittle case.

And the opinion in Young's case is fully sustained by Judge Story. In his Conflict of Laws, section 514, Judge Story admits that if an administrator in a foreign State collect assets, he would be liable in his own wrong.

"But," says this able commentator, "it would be quite a different question, whether the payment of such debts would be a valid pay-

69 ment by the debtor, or discharge of such person therefrom; for it is exceedingly clear that the probate grant of letters testamentary or of letters of administration, in our country, give authority to collect the assets of the testator or intestate, only in that country, and do not extend to the collection of assets in foreign countries, for that would be to assume an extra-territorial jurisdiction or authority, and to usurp the functions of the foreign local tribunals in those matters."

It is no answer to the objection to say that the effects of the testator or intestate are assets whereever they are situated, whether at home or abroad, and that such effects as are in a foreign country, at the time of his death, although they remain and are wholly administered there by the executor are equally assets. Doubtless this is true, but the question is not whether they are assets or not, but who is clothed with au-

70 thority to administer them and this must be decided by the local jurisdiction where they are situated, for the original administration has no extra-territorial operation.

The reasoning of Judge Story to this effect might be multiplied in the subsequent sections of his work, but it is not necessary. I have given

to this case a full and deliberate consideration, and the convictions of my mind at the last term have undergone a change. The law as laid down in Story and decided by the supreme court of Tennessee, in the absence of all decisions to the contrary, and controverted only by "dicta" handed by doubtful quotations, supported, as I conceive them to be, by reason of the thing and by public policy, commands my respect and confidence, and must be considered the law of this case.

71 The jury are therefore instructed that if they find the facts of the case to be, that Quarles died in Alabama, whether that State or Tennessee was his domicile, Goodloe, as administrator under the laws of Alabama, has no authority to collect the debt due by Wilkins in Tennessee, although no administrator may have been appointed in Tennessee at that time, so that the voluntary payment by Wilkins to Goodloe is no discharge of the debt as against the plaintiff who is admitted to be the administrator subsequently appointed by the county court of Shelby County, Tennessee, and the plaintiff will therefore be entitled to recover.

72 The def't asked the court to charge the jury that a voluntary payment by a debtor in Tennessee to an administrator appointed in Alabama, that being the intestate's domicil, would be binding and valid and a discharge of the debtor. And further, that if the jury found that the def't owed the intestate by account; that the intestate was domiciled in Alabama; that he died there; that he left no creditors or distributees in the State of Tennessee; that def't, Wilkins, has paid the full amount to Goodloe as administrator (that Goodloe was this administrator): which he has returned and charged himself with in his inventory in Lawrence Co., Ala.; that in such a state of facts the action must fail, & they shonld find for the defendant.

But the court declined so to charge, to which the def't excepted in law.

73 The jury returned a verdict in favour of the plaintiff for $3,455^{22}$; whereupon the defendant moved the court to grant him a new trial and to set aside said verdict, which the court refused to do, and rendered judgment against defendant.

To which refusal to grant a new trial, and to the rendition of said judgment as well as for alleged errors in said charge the defendant excepted in law, and now tenders this his bill of exceptions, which is signed, sealed, and made a part of the record.

(Signed) CONNALLY F. TRIGG. [SEAL]

74 UNITED STATES OF AMERICA, *District of West Tennessee:*

I, Abram S. Mitchell, clerk of the United States circuit court for the district of West Tennessee, do certify that the foregoing seventy-three pages of manuscript contain a full and true copy of the record and proceedings had in said court in the case of Semple Ellett, administrator of the estate of Thos. N. Quarles, dec'd, plaintiff, against James S. Wilkins, surviving partner of the firm of F. H. Clark & Co., as the same remain of record and on file in my office.

Given under my hand and the seal of said court at office in the city of Memphis this 6th day of January, A. D. 1869.

[SEAL] A. S. MITCHELL, *Clerk.*

75 *Bill of cost.*

Circuit court, U. S. September term, 1867.

SEMPLE ELLETT, ADM'R OF THOS. N. QUARLES, dec'd.
versus.
JAMES S. WILKINS.

Judgment 12 day of Sept., 1867.

For debt		$
For damages		$3, 455 22

CLERK'S FEES.

Issuing 1 summons, and seal, $1 20 each ; 1 certificate on do	1 20	
15c. each ; bond for cost, 30c; filing do., 10c; 1 certificate on do	55	
15c; filing declaration, 10c; certificate on do., 15c; 1 copies of do., 2 20	2 60	
rule to plead, 15c; filing 2 plea, 20; 2 certificate on do 30;	65	
filing replication, 10c: certificate on do., 15c; filing 20 other papers	25	
in cause, 10c. each, 2 00; 20 certificates on same, 15c. each, 3 00;	9 00	
issuing 8 spas. for witnesses, 25c. each, 2 00; coms. for depositions, 45c. each;	2 00	
administering 20 oaths, 10c. each, 2 00; 3 continuances, 15c. each, 45;	2 45	
order for judgment by default ; final judgment. 45; order for	45	
costs, 15c; judgment against security, ; order for execution, 15c.	30	
Issuing execution, ; certificate on do. ; copying and filing		
costs, 40; certificate, 15c.; making dockets, indexes, &c., 3 00	3 55	
enrolling cause, 6 60; entering and filing 2 returns, 50; revenue	7 10	
stamp ; 8 orders, 1 20; app'l bond, 60c.; 3 acknowledgments, 75	2 55	
Record for Supreme Court certificate & seal	22 90	28 65
		22 90
		51 55

RYDER MARSHAL'S FEES.

J. W. Griffith for Jones	2 00	
Executing 1 summons, $2 00; executing 4 subpœnas, 50c. each, 2 00.	2 00	
W. W. Coleman, 1 spa., 50	50	
miles of travel in serving process, 6c. each		
To serving 11 spas	5 50	
		10 00

ATTORNEY'S FEE.

Docket fee on 1 depositions	2 50	
Docket fee in court	20 00	
		22 50
		$84 05

A. S. MITCHELL, *Clerk*,
ISAAC MORRISON, *D. C.*

Received the above costs January 6, 1869.

A. S. MITCHELL, *Clerk.*

76 Circuit court of the United States for the district of West Tennessee:

Know all men by these presents, that we, J. S. Wilkins, W. H. Affleck, & D. A. Shepherd are held and firmly bound unto Semple Ellet, adm'r of T. W. Quarles, in the sum of eight thousand five hundred dollars to be paid to said Ellet, his executors or administrators, to which payment well and truly to be made we bind ourselves, and our and each of heirs, executors, and administrators, firmly by these presents. Sealed with our seals, & dated this 18th day of April, 1868. Whereas the above bound Wilkins has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the circuit court of the United States for the district of West Tennessee:

Now, therefore, the condition of this obligation is such that if the above named Wilkins shall prosecute its said writ of error to effect and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise shall be and remain in full force & effect.

Sealed and delivered in the presence of—

J. S. WILKINS, [SEAL.]
By his att'y in fact, W. Y. C. HUMES.
W. H. AFFLECK. [SEAL.]
D. A. SHEPHERD. [SEAL.]

Approved:

CONNALLY F. TRIGG, *Judge.*

(Indorsed:) Filed 18 April, 1868.

A. S. MITCHELL, *Clerk,*
ISAAC MORRISON, *D. C.*

UNITED STATES OF AMERICA, *District of West Tennessee:*

I, Abram S. Mitchell, clerk of the United States circuit court for said district, do certify that the foregoing is a full and true copy of the bond given by J. S. Wilkins for the prosecution of the writ of error in the case of Semple Ellett, administrator, &c., against said James S. Wilkins as therein recited, as the same remains on file in my office in said case.

Given under my hand and the seal of said circuit court this 25th day of May, A. D. 1869.

[SEAL.]

A. S. MITCHELL, *Clerk,*
ISAAC MORRISON, *D. C.*

(Indorsed:) Sup. Ct. U. S. 1868, Dec. term, No. 467. Wilkins, &c., p. e., vs. Ellett, adm'r. Copy of appeal bond.

Filed 26 November, 1869.

77 United States of America to Semple Ellett, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of West Tennessee, where you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice not be done to the parties in that behalf.

Witness the Hon. C. F. Trigg, judge of the district court of the United States holding the circuit court for the district of West Tennessee, this 18 day of April, 1868.

[SEAL.]

CONNALLY F. TRIGG.

(Indorsed:) No. . Semple Ellett, adm'r, &c., vs. James S. Wilkins. Citation.

Filed 18th April, 1868.

A. S. MITCHELL, *Clerk,*
ISAAC MORRISON, *D. C.*

Acknowledged service of this citation this 18 day of April, 1868.

D. K. McRAE,
Attorney for Semple Ellett, Ad.

(Indorsement on record:) W. Tennessee C. C. U. S. No. 232. James S. Wilkins, surviving partner of F. H. Clark & Co., plaintiff in error vs. Semple Ellett, adm'r of Thomas U. Quarles, dec'd.

Filed 10th May, 1869.

United States Supreme Court.

SEMPLE ELLETT, ADM'R, APPELLEE,

VS.

JAMES S. WILKINS, APELLANT.

I propose to submit this case on the single question "of the efficacy of a voluntary payment of a debt to a "foreign administrator, as against the claim of an ad- "ministrator duly appointed at the domicil of the debtor "*where the debt was paid.*"

For argument it is admitted that the intestate was domiciled in Alabama, and died there. The administrator was appointed there and received his letters there. The debtor was domiciled in Tennessee and paid the debt (the evidence of which was a book account) to the Alabama administrator, at the former's domicil in Tennessee.

Subsequently the appellee was duly appointed administrator (being also next of kin) at the domicil of the debtor in Tennessee, and he brings suit for the debt as assets. Is the debtor discharged by the voluntary payment?

The appellant relies on the decisions in New York.

Williams vs. Storrs, 6 John's Ch., 353.
Doolittle vs. Lewis, 7 " " 45.
Vroom vs. Van Horne, 10 Paige, 549.

It is unquestionably true that the judicial opinion in New York adopts the view of the appellant, but this

opinion is derived from dicta and not from any adjudication of the direct question.

See Parsons vs. Lyman, 20 N. Y. R., 103.
Judge Story's opinion is also relied on.
Trecothick vs. Austin, 4 Mason, 16–33.

But this also was mere dictum and has been directly controverted by the author in the "Conflict of Laws," where the question is properly presented with its qualifications.

Conflict of Laws, sections 511, 514*a*, 514*b*, 515.

In this last section Judge Story lays down the principle to be that the debtor may voluntarily pay a debt, which the administrator may *lawfully receive under that administration.*

As, if the debtor and creditor were identically domiciled, at the death, and the debtor voluntarily pay in another country where he may be found.

"Because the right to receive it primarily attached where the original administration was granted."

In other words, the administrator might lawfully receive it *under that administration.*

Conflict of Laws, section 515 *a.*
Huthwaite vs. Phaire, 1 Mann. & Grang., 159.

The identical question in this case has been presented in Tennessee, and the law of that State settled.

It is there taken for granted as settled doctrine, both in England and America, that an executor or administrator appointed in one country is not by virtue of such appointment entitled to sue or liable to be sued, in his official capacity, in any other country.

Therefore, he acquires no interest in the assets, and has no responsibility.

He is a *stranger* to the debt, without authority to receive or give acquittance.

Young, Adm'r, vs. O'Neal, 3 Sneed, 55.

The statute law of Tennessee forbids any one to enter upon the administration of any deceased person's estate until he has obtained letters of administration. And these letters are to be granted by the county court where deceased resided; or where there are *bona notabilia;* or where any debtor of the deceased resides.

Code, 2201, 2202, 2203.

It is evidently the purpose of this legislation to retain the judicial supervision over deceased persons' estates, which the doctrine contended for would wholly prevent.

This statute, and the decision of the Supreme Court referred to above, is such *local law* settling the rights of property in the state as the federal courts are bound to adopt; for the administration cases settle the rights of persons and property both real and personal.

Swift vs. Tyson, 16 Pet., p. 1.
3 " 270.
11 Wh., 361.
13 Pet., 45.
1 " 360–476.
2 " 492.
6 " 291.
2 " 675.
5 " 151.

By this law the county court possessed the function to appoint and administer, and was charged with the duty to secure the estate by a proper bond.

The effect of this doctrine of voluntary payment is to give force to the extra territorial authority by an usurpation of the functions of the local tribunal.

It facilitates the fraudulent transfer of assets.

It drives creditors out of the jurisdiction to sue for their debts.

And prevents the local tribunals from interfering to protect the rights of legatees and next of kin.

And sets at naught the positive enactment which, in

forbidding such administration, forbids all aid and encouragement of it.

And violates the law of the State expounded and settled.

3 Sneed, *supra*.

D. K. McRAE,
Of Counsel for Appellee.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

BRIEF.

JAMES S. WILKINS, *Plaintiff.*

AGAINST

SEMPLE ELLETT, Administrator of THOMAS N. QUARLES, Deceased, *Defendant.*

HUMES & POSTON, Attorneys for Plaintiffs.

MEMPHIS:
PRINTED AT THE PUBLIC LEDGER JOB PRINTING OFFICE, NO. 13 MADISON STREET.

1870.

Supreme Court of the United States.

WILKINS,
vs.
SEMPLE ELLETT, Adm'strator of Thos. N. Quarles, dec'd.

BRIEF OF HUMES & POSTON, Attorneys for Plaintiff.

The question presented for the decision of the Court in this case is, whether voluntary payment to a foreign Administrator effectually discharges the home debtors. The facts are, that Thomas N. Quarles being domiciled at Courtland, Alabama, died there; William Goodlow qualified as his Administrator, in the Probate Court, at Courtland, Alabama. In the inventory of the assets duly returned by him, he reported a fund of $3500 as on deposit with F. H. Clarke & Co., of Memphis, Tennessee. This deposit had been made by Quarles in his life time, with F. H. Clarke & Co., his employers. Goodlow, as Administrator, and with his letters of administration, came to Memphis, presented them to Wilkins, surviving partner of F. H. Clarke & Co., and demanded the delivery and payment to him of the fund on deposit; Wilkins delivered the money to him. Subsequently, Semple Ellett, one of the next kin of Quarles, and a resident of the State of Virginia, come to Memphis, Tennessee, qualified there as administrator, and sued Wilkins for the fund aforesaid; Wilkins pleaded his former voluntary payment to Goodlow, the Alabama Administrator, as a valid discharge. The proof showed the facts as above stated, and in addition that Goodlow had made a settlement of his adminstration with the Probate Court at Courtland, and in that settlement had accounted duly for the fund.

This inquiry involves several minor inquiries. First—has the foreign Administrator title to personal property out of the jurisdiction of the Court of his appointment? Every debt, payable generally, whether due by note, bill, bond or open account follows the person of the creditor, not that of the debtor, and is

In Thorne vs. Watkins, 2 Vessey, 35, Lord Hardwicke said that all debts follow the person, *not of the debtor in respect of the right of property, but that of the creditor to whom due.*

In case of Parsons vs. Lyman, 20 New York R. 112, the Court says "personal property has no locality. It is subject to the law "which governs the person of the owner, as well in respect to "the disposition of it by act *inter vivos* as to its transmission by "last will and testament, and by succession upon the owner dying "intestate."

The rights of next of kin in cases of intestacy depend upon the laws of the country where the deceased had his domicil, and for that purpose all personalty, including choses in action, are to be deemed local, that is, belong to the domicil, no matter where collected.

This question is directly decided in the case of Peterson vs. the Chemical Bank, 32, New York R., p. 41: the facts were these: Cohen died, domicil in Connecticut; his personal representative assigned to Peterson an open account for the sum of $32,321, being the amount standing to the credit of Cohen as a dealer on the books of the defendant's bank in New York.

Peterson sued the bank for the account in the Courts of New York, claiming under the assignment. At page 43 the Court says: "It is not because the executor or administrator has no "title to the assets of the deceased existing in another country "that he is refused a standing in the Courts of such country, *for* "*his title*, though conferred by the law of the domicil of the de- "ceased, is recognized everywhere." At page 45 the Courts further says: "The executor, as soon as qualified, is vested with "title to all the movable property and rights of action of the "deceased;" "this title is, it is true, fiduciary, nevertheless it is "perfect," and the title of the plaintiff arising upon an assignment by a foreign executor of a *merechose* in action was sustained.

The legal title to all the personal property of the deceased, including choses in action, rests in the legal representative. Beecher vs. Buckingham, 18 Conn., R. 110, 120; Shultz vs. Pulser, 11 Wend. 363; Perkins vs. Stone, 18 Conn., 270; Royd vs. Hubbard, 4 Metcf., Mass. R., 252; Hutchins vs. State Bank, 12 Metcf., Mass. R., 252; Saurey vs. Mayor of New York, 2 Sandf.; Brown vs. Brown, 1 Barb., Ch. 189; Evans vs. Tatem, 9 Serg., Raule 258.

The foregoing cases recognize the title of the personal representative, who has received letters in one State, to personal

True, the personal representative cannot sue in the Courts of another State without taking out letters of administration, or letters testamentary there, but this want of power arises not from want of title, but because of the policy adopted by the States to secure creditors and legatees resident within their borders.

Doolittle vs. Lewis, 7 Johns, Ch. R. 51; Parsons vs. Lyman, 20 New York R. 112.

The want of power to sue in the foreign representative is mere matter of form.

Thorne vs. Watkins, 2 Ves., Ser. 35; Doolittle vs. Lewis, 7 Johns, Ch. R. 51.

In Nesbit vs. Stewart, 2 Devereux and Battle's Rep., 24, the Supreme Court of North Carolina declared a voluntary payment to a foreign administrator effectual, as a discharge. The facts were, that Stewart, a resident of Georgia, visited the defendant, Martha Stewart, his mother, in Iredell county, North Carolina, and died there; he had with him at the time of his death $434 in money, which the defendant took possession of and paid over to James G. Stewart, administrator of the decedent by appointment of the ordinary Court of Fayette county, Georgia. The plaintiff, Nesbit, a resident of Georgia, sued the defendant, Martha Stewart, in the Iredell Circuit Court as executrix of the decedent; the defendant pleaded *ne unques executrix;* the plaintiff replied that she was executrix of her own wrong. Both the inferior and appellate Courts held the payment an effectual discharge, and, in part, based their opinion upon the fact that the fund, for which it was sought to hold her liable, had been placed in the hands of the proper representative of the deceased in the State where he was domiciled, and where the plaintiff was domiciled, and where the fund was liable to the demand of the plaintiff as they should be according to the laws of that State.

These reasons apply with augmented force in the case under consideration; for here the plaintiff is a non-resident of Tennessee, claiming only as a distributee, and next of kin; the fund arising from this claim has been returned to and accounted for by the administrator in the Court of the domicil of the deceased according to the law, of which the estate must be distributed, and plaintiff must receive his distributive share.

In Atkins vs. Smith 2 Atkyns, R., p. 63, the Lord Chancellor said: "Ecclesiastical jurisdictions are limited within their partic-
"ular districts, and an administration, taken out here, will not ex-

"tend to the colonies in America, but if the executor sends over "an exemplification of a probate to Maryland, or any other colony, "the agent may, by letter of attorney from him, collect in the "effects of the testator and is chargeable as much as if the execu- "tor had received them himself."

In the case of Beatie's administrator vs. Abercrombie and others, 18 Alabama, the Court decide that a Georgia administrator might settle a claim against a voluntary company, part of whom resided in Georgia and part in Alabama, so as effectually to discharge the Alabama members from liability to an Alabama administrator subsequently appointed. The case of Doolittle vs. Lewis, 7 John's Ch., R. 45, is directly in point; there a debtor residing in New York voluntarily paid to a Vermont administrator a mortgage debt; the Chancellor declared the payment an effectual discharge, and he says it is true that the Vermont administrator could not sue in a Court of New York without first taking out letters in New York, but the parties might make a valid settlement in *pais;* the policy of the law was satisfied by refusing its active aid to any but home administrators. Parsons vs. Lyman, 20 New York R. 112, contains the fullest and most perspicuous discussion of the whole subject both upon principle and authority. Denio, J., says it is an established doctrine of both international and municipal law that personal property has no locality. It is subject to the law which governs the owner, as well in respect to the disposition of it by act *inter vivos*, as to its transmission by last will and testament, and by succession upon the owner dying intestate. The principle has its foundation in international comity. But the right which an individual may claim to personal property in one country, under title from a person domiciled in another, can only be asserted by the legal instrumentalities which the institutions of the country, where the claim is made, have provided. The foreign law furnishes the rule of decision as to the validity of the title claimed, but in respect to the legal assertion of that title it has no extra territorial force. As a result of this doctrine, he says it is settled that an administrator appointed in one State has not, as such, any authority beyond the sovereignty by virtue of whose laws he was appointed. But if residents of New York have personal property of, or are indebted to a party domiciled abroad, they may recognize the title of a foreign administrator and pay him.

The authorities establish that personal property has no

locality, but is subject as to its disposal, transmission or devolution to the law of the owners domicil that a debt, *payable generally*, due by negotiable paper, bond or open account follows in respect of the right of property the person of the creditor, not that of the debtor; that the title of an administrator embraces personally, including choses in action, beyond the jurisdiction of the sovereignty to whose courts he owes his appointment, and he may sell and validly dispose of such personalty and choses in action, or collect the debt upon voluntary payment by the foreign debtor and execute an effectual discharge, and for such assets he is accountable to the court appointing him; that the inability of the administrator to sue in a foreign tribunal arises not from defect of title, but is caused by a rule adopted by all civilized countries upon a policy to provide for and protect home creditors so far as assets are located within its jurisdiction.

Coke, Lit. 209; Schultz vs. Pulser, 11 Wend, 363; Brown vs. Van Horn, 10 Paige, 549; Williams vs. Storrs, 6 Johns Ch. R. 353; Trecothick vs. Austin, 4 Mason, R. 33.

The case of Young, administrator, vs. O'Neal, 3 Sneed, p. 55, deciding that a voluntary payment to a foreign administrator by a debtor in Tennessee, before administration granted there, is not a valid discharge of the debt as against an administrator, subsequently appointed in Tennessee, is erroneous. The learned Judge who delivered the opinion gives an established principle that a foreign administrator cannot sue or be sued in his official capacity as a reason why the voluntary payment is not effectual; he confounds here and in his subsequent reasoning two distinct things, *the title of the administrator*, and the authority of the administrator to sue in a foreign tribunal The title of the administrator or executor is one thing, and the authority to sue quite another.

An executor or administrator represents the person of the intestate, and so far as the title of personal property is concerned, stands in his stead.

Co. Lit., 209 A.; Shultz vs. Pulser, 11 Wend, 363; Rand vs. Hubbard, 4 Metcalf, R. 252; Hutchins vs. State Bank, 12 Metcalf, R. 422; Brown vs. Brown, 1 Barb., Ch. R., 189; Whyte vs. Rose, 3 Ad. and Ellis N. S., 498; Parsons vs. Lyman, 20 N. Y. R., 112; Peterson vs. Chemical Bank, 32 N. Y. R., 41, 45.

The want of authority to sue arises not from defect of title, but as a limitation on the principles established in reference to the personal property by the comity of nations. This limitation or restriction is founded in the policy of taking care of and protecting the interests of home creditors; it is not a denial of title,

but simply a refusal to lend the aid of the courts in asserting this title until the administrator or executor qualify, and give bond in the domicil of the debtor for the protection of home creditors.

In Story's Conflict of Laws, sec. 515, the law is thus stated: "But, although an executor or administrator is not entitled to "maintain a suit in a foreign court in virtue of his original letters "of administration, yet it has been said if a debtor chooses volun- "tarily there to pay him a debt, which he may lawfully receive "under that administration, the debtor will be discharged." This proposition is, or may be, true to the extent in which it is thus guardedly laid down and limited. Then the learned author gives an instance where both creditor and debtor resided at the time of his death in the same country, and administration should be there taken out on the creditor's estate, in that case it may be paid voluntarily by the debtor in another country, if he should afterward change his domicil to that country or be found there; and the discharge of the administrator will be held a good discharge everywhere else, although no new administration be taken out; because the right to receive it primarily attached there. By this illustration the learned author certainly did not mean to assert that the facts of the creditor and debtor being of the same domicil at the death of the creditor and the taking out of administration there produced the relation of creditor and debtor between the administrator and the debtor as persons, and independent of the authority of the administration as administor; for if so, then the administrator could sue him in another State without taking out letters of administration, as he could upon a promissory note payable to bearer, and obtained by him in the State of administration, or as he could for a piece of personal property possessed and acquired by him in the State of his administration. I take it that he simply meant to assert that the facts of identity of domicil of the creditor and debtor, at the date of the death of the creditor, made it proper for the administrator to return such debt as part of the assets of his intestate's estate—being a debt due at the domicil of the creditor. But every debt, *payable generally*, whether due by note, bill, bond or open account follows the person of the creditor, not that of the debtor, and is due at the creditor's domicil. Lord Hardwicke, in Thorne vs. Watkins, 2 Vesey, 35, said that all debts follow the person, *not of the debtor in respect of the right or property, but of the creditor* to whom due. If so, then such debt may properly be said

to be due in that country, and properly falls within that administration if collected by the administrator, whether upon voluntary payment or by suit in the foreign country after taking out administration in such foreign country; and thus it is manifest that every reason which, in the opinion of Judge Story, made a voluntary payment to a foreign administrator valid in the instance put by him, applies with equal force to other debts payable generally, although the debtor did not at the creditor's death reside in the same State as the creditor. To strengthen this further, suppose the creditor to reside in one State and the debtor in another, the creditor dies and administration is taken out on his estate in the State of his domicil; then suppose the debtor has property in that State, or passing through it, as goods upon cars or in steamers, can there be any doubt that the administrator could attach the goods of the non-resident debtor for the claim due his intestate's estate under the attachment laws now uniformly in force in all the States of this Union. This hypothetical case shows that the debt is due at the domicil of the creditor, and it shows how unwise the rule denying the validity of these voluntary payments would be, and how essential the opposite rule is for the protection of commercial men and interests. Under the former, the merchant and importer of foreign goods from other States cannot avoid the trouble, delay and expense of an attachment suit upon his property in, or goods (in transit) through another State; while under the latter he may do so by a voluntary payment. Certainly if a foreign debtor went into the State or domicil of the administrator, he could be sued there for the debt by the administrator, and a plea that he was liable to be sued in another jurisdiction would be insufficient; here his voluntary payment is valid because the administrator can sue him and force the payment of the debt, and to avoid this the debtor has the right to make a voluntary payment. In the former supposed case, where his property is situate in or in transit through another State, the same right of suit exists in favor of the administrator, and if so, the same right to pay voluntarily must also exist. These instances show that in this country of such remarkable commercial activity between the States a wise policy looking to the facilitating commerce demands the establishment of the rule that voluntary payments to foreign administrators shall be held valid.

There can be little doubt that if an administrator or executor appointed in the State where his intestate or testator died, should go into another State, and should without taking out new letters of administration collect assets in such State, and bring them home to the State from which he had received his original appointment or qualification, he would be liable to account in the Courts of the latter State for the assets so received. Such is the doctrine of Dowdale's case, 6 Co. R. 47; Evans vs. Tatem, 9 Serg. and Rawl. R. 252; Parsons vs Lyman, 20 N. Y. R. 112. This principle being correct, it would be utterly inconsistent with it to hold that a debtor who had paid to such foreign administrator, and the funds had been applied as assets at the place of principle administration should be liable a second time for the same debt to an administrator subsequently appointed.

The case now at bar involves and embraces all the facts calling for the application of the foregoing principles. The deceased was domiciled at Courtland, Alabama; Goodlow administered there, he inventoried this claim, he demanded payment of Wilkins, and received the fund before any administration had been taken out in Tennessee, he carried the fund to Alabama and accounted for it there, and his settlement was accepted; no creditor of the decedent residing in Tennessee complains; indeed, there are none: Semple Ellett is a citizen and resident of Virginia, and not a creditor, but simply one of the next of kin whose distributive share must be determined by the laws of Alabama, and according to the weight of authority should be determined by the Courts of Alabama, and to the principal administration in Alabama any assets collected under an auxillary administration in Tennessee should be sent for final distribution there. Every principle and reason of justice, expediency, convenience and economy arising on the facts demands that this payment should be declared effectual.

HUMES & POSTON,
Attorneys for Plaintiff.